

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

99 DEC 28 AM 8 40

EXECUTIVE SECRETARY

IN RE:

PETITION OF KNOXVILLE
INFORMATION AND REFERRAL, INC.
FOR ALLOCATION OF AN N11 NUMBER
(ABBREVIATED DIALING CODE)

Docket No. 99-00743

**RESPONSE OF NATIONAL TELEPHONE ENTERPRISES, INC.
TO PETITION FOR ALLOCATION OF AN N11 NUMBER
SUBMITTED BY KNOXVILLE INFORMATION AND REFERRAL, INC.**

COMES NOW National Telephone Enterprises, Inc. ("NTE"), by and through counsel, and for its Response to the Petition for Allocation of an N11 Number ("Petition") submitted by Knoxville Information and Referral, Inc. ("KIR") to the Tennessee Regulatory Authority ("TRA") on October 8, 1999.

I. INTRODUCTION

In its Petition, KIR requests the assignment of the N11 code 211 in the Knoxville area or, in the alternative, assignment of the 511 code in the Knoxville area. KIR attached a copy of the TRA's Order Granting Allocation of N11 Abbreviated Dialing Code ("N11 Order") in Docket No. 98-00554 entered June 22, 1999 granting NTE's application for allocation of the N11 dialing code 211 in the BellSouth exchanges of Chattanooga, Knoxville, Memphis and Nashville, subject to the requirements of BellSouth Telecommunications, Inc.'s Abbreviated Dialing Tariff A39.

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Petitioner maintains that "NTE did not initiate a service request order for the 211 abbreviated dialing code prior to May 1, 1999, nor has NTE done so to date." Petition at 3. Petitioner also contends that "NTE has failed to establish service utilizing the 211 abbreviated dialing code prior to July 1, 1999, ninety (90) days after the date of the subscriber assignment -- April 1, 1999." Petition at 3. Upon these two unsubstantiated statements, Petitioner requests the TRA to recall the 211 abbreviated dialing code and that the 211 dialing code should be considered available for reassignment pursuant to BellSouth Tariff A39.1.2A.

On October 5, 1999, the Executive Secretary of the TRA sent a letter to BellSouth Telecommunications, Inc. ("BellSouth") informing BellSouth that an application for allocation of an N11 code had been filed with the TRA and inquiring whether the N11 number 211 was available for assignment or if an alternate was available. On October 14, 1999, Mr. Guy M. Hicks of BellSouth responded to the TRA's October 5, 1999 letter stating "please be advised that 211 is not available for allocation. It has already been assigned as indicated below . . . As information, the N11 assignments in Tennessee are as follows: 211 - National Telephone Enterprises (NTE)" BellSouth October 14, 1999 Letter.

On October 18, 1999, the TRA sent a letter to BellSouth positing questions concerning NTE's service initiation request and provisioning of N11 service pursuant to the TRA's assignment of 211 to NTE. On November 9, 1999, BellSouth responded to the TRA's data request outlining NTE's and BellSouth's actions and undertakings concerning the 211 code in Memphis, Nashville, Knoxville and Chattanooga.

I. NTE SATISFIED THE REQUIREMENTS OF BELL SOUTH TARIFF A39.

A. NTE SATISFIED THE INITIATION OF SERVICE ORDER REQUIREMENT

Petitioner alleges that “NTE did not initiate a service request order for the 211 abbreviated dialing code prior to May 1, 1999, nor has NTE done so to date.” Petition at 3. BellSouth General Subscriber Services Tariff A39.1.2(B) states, “Within 30 calendar days of the number assignment, the N11 subscriber must initiate a service request order which will determine the subscriber’s provisioning date. This provisioning date must be within 90 calendar days of the date the N11 number is assigned to the subscriber.” *Id.* BellSouth, in its November 9, 1999 response to the TRA’s Second Data Request, responded to Item No. 3, in part, as follows: “Additionally, the customer contacted BellSouth immediately upon the TRA’s assignment of the 211 number and stated its intention to establish service in Memphis and Nashville first, and then to establish service in Knoxville and Chattanooga.” BellSouth November 9, 1999 Letter. By BellSouth’s own response, NTE satisfied the initiation of service request order in BellSouth Tariff A39.

By attaching a copy of the TRA’s June 22, 1999 Order assigning the 211 code to NTE, Petitioner acknowledges that, pursuant to BellSouth Tariff A39, NTE had thirty (30) days from June 22, 1999 (until July 22, 1999) to initiate a service request order. At best, it seems disingenuous that Petitioner would suggest that by failing to initiate a service request order by May 1, 1999, *prior* to the TRA’s assignment of the N11 code, NTE had failed to satisfy the provisions of BellSouth Tariff A39.

B. NTE SATISFIED THE INITIATION OF SERVICE REQUIREMENT

Petitioner asserts that NTE “failed to establish service utilizing the 211 abbreviated dialing code prior to July 1, 1999, ninety (90) calendar days after the date of the subscriber assignment -- April 1, 1999.” Petition at 3. Again, Petitioner’s assertion ignores the TRA’s Order assigning the 211 code to NTE on June 22, 1999 and is without merit. NTE has satisfied the initiation of service requirement as evidenced by BellSouth’s November 9, 1999 response to the TRA’s data request and by NTE’s actions to establish service. BellSouth states in response to TRA Item No. 1 concerning the Knoxville area that “[t]he customer signed a contract for N11 service with BellSouth on October 29, 1999, and the contract did not specify a provisioning date.” BellSouth November 9, 1999 Letter. BellSouth’s response is provided, in part, in response to the TRA’s question in Item No. 3 “[w]hat was/were the provisioning date/dates requested [by NTE]”? The inquiry as to provisioning date requested by NTE is not relevant to the matter at hand. The provisioning of N11 service is governed by a General Subscriber Services Tariff duly filed with the TRA by BellSouth. The provisioning date of N11 service, as such, is established by the tariff. BellSouth Tariff A39.1.2(B) states, in part, “[t]his provisioning date must be within 90 calendar days of the date the N11 number is assigned to the subscriber.” *Id.* The provisioning date could neither be established by subscriber request, unless expressly provided for in the tariff, nor established by contract since the tariff provisions, under well-established law, supersede contract provisions. Pursuant to BellSouth Tariff A39.1.1(S) “N11 Service will be provided a maximum of 30 days after the customer’s request for service has been processed in order to allow the Company sufficient time for provisioning.” *Id.* By this provision, BellSouth afforded itself an additional thirty (30) period after the processing of a customer’s request for service to

provision N11 service. In reading these tariff provision consistently, it is clear that BellSouth, the author of the tariff, did not intend to be held to a hard-and-fast provisioning date scheme for N11 service. Indeed, it does not serve a carrier's interest to establish hard-and-fast provisioning deadlines in their tariffs. Given the complexities and not infrequent delays in facilities-based telecommunications provisioning, a contrary interpretation of the BellSouth Tariff A39 provisions would not only make these provisions conflict, but would create too high of a standard for the carrier, would infringe BellSouth's discretion in service order processing and provisioning and would place BellSouth in jeopardy of technically violating its tariff despite, in certain circumstances, BellSouth's best efforts to provision service.

BellSouth's response to the TRA's data request reflects the fact that NTE had satisfied the initial service request order requirement, had worked with BellSouth on a consistent basis and stood ready to establish N11 service pursuant to Tariff A39. BellSouth's response to Item No. 3 of the TRA's Second Data Request states that NTE maintained consistent contact with BellSouth to arrange establishment of service and "did nothing to suggest that it was no longer interested in and working toward establishing the N11 service in each of these cities. BellSouth November 9, 1999 Letter. BellSouth further stated in its response to Item No. 2 of the TRA's Second Data Request states that NTE "submitted all necessary orders for the provision of the N11 service in Knoxville as of October 29, 1999. BellSouth has not yet filled these orders." Id.

Throughout this process, BellSouth never indicated to NTE that the service order was being processed in a manner inconsistent with BellSouth's practices or Tariff A39. Since BellSouth was the party in control of the facilities and provisioning, NTE relied upon and followed BellSouth's practices concerning N11 service order processing and provisioning. A

determination that these practices are inconsistent with Tariff A39 would raise the issue of discrimination insofar as NTE would not have been afforded non-discriminatory treatment vis-a-vis existing and prior N11 service providers in the state of Tennessee.

II. THE PUBLIC INTEREST

In its Interim Order in Docket No. 92-13892, the TRA determined that N11 numbers should be allocated for both commercial and non-commercial use. Indeed, rational, efficient and fair allocation and usage of N11 codes serves the public interest. In the context of this proceeding, allocation of the N11 code 511 to Petitioner in Knoxville would serve the public interest. BellSouth's October 14, 1999 response to the TRA's October 5, 1999 letter indicated that the N11 code 511 was not assigned at present. All other N11 codes, according to BellSouth's response, were assigned or otherwise allocated. Moreover, Petitioner requests, "should the 211 abbreviated code be unavailable for any reason, Petitioner requests allocation of an alternative N11 abbreviated dialing code, and respectfully requests 511." Petition at 3.

Assignment of 511 to Petitioner would be in the public interest as it would provide for the usage of a currently unassigned public resource to provide referral and information service to the Knoxville, Tennessee community. Moreover, maintaining the current assignment of 211 to NTE is in the public interest as determined in the TRA's June 22, 1999 Order. Revocation of the 211 code would result in disruption of service to Tennessee consumers, delay in the provisioning of new information services to Tennessee consumers, economic loss and harm to a provider of information services and harm to competition in the Tennessee telecommunications market.

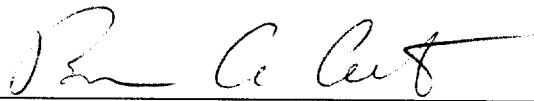
III. ALTERNATIVE ALLOCATION OF 211 AND 511 IN THE KNOXVILLE AREA

NTE's right to provision service under the 211 code in the Memphis, Nashville, Knoxville and Chattanooga under BellSouth Tariff A39, has been established by the foregoing. Moreover, NTE has demonstrated that an overly strict interpretation of BellSouth Tariff A39 would jeopardize the carrier's ability to provision efficiently N11 service and would ultimately harm the public interest. However, in the interest of providing an alternative assignment which would serve the public interest and accommodate the Petitioner's request, NTE would be amenable to the assignment of the 211 code in the Knoxville area conditioned on the assignment of the presently available 511 code to NTE in the Knoxville area.

WHEREFORE, based upon the foregoing, NTE prays that the TRA reject Petitioner's request that the 211 code be recalled. In the alternative, NTE requests that the 211 code in Knoxville be assigned to Petitioner on the condition that the 511 code in the Knoxville area be assigned to NTE.

Respectfully submitted this 23rd day of December, 1999.

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